

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2003-74-C – ORDER NO. 2003-533  
AUGUST 28, 2003

IN RE: Application of Exergy Group, LLC for a	) ORDER
Certificate of Public Convenience and	) GRANTING
Necessity to Operate as a Reseller of	) CERTIFICATE FOR
Interexchange Telecommunications Services	) INTEREXCHANGE
and for Alternative Regulation.	) AUTHORITY AND
	) MODIFIED
	) ALTERNATIVE
	) REGULATION

This matter comes before the Public Service Commission of South Carolina (the “Commission”) by way of the Application of Exergy Group, LLC (“Exergy” or the “Company”) requesting a Certificate of Public Convenience and Necessity authorizing it to operate as a reseller of interexchange telecommunications services within the State of South Carolina. The Company’s Application was filed pursuant to S.C. Code Ann. §58-9-280 (Supp. 2002) and the general regulatory authority of the Commission. By its Application, Exergy also requested alternative regulation of its business services offerings identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C and requested waiver of certain Commission regulations.

The Commission’s Executive Director instructed Exergy to publish, one time, a Notice of Filing in newspapers of general circulation in the areas of the state affected by the Application. The purpose of the Notice of Filing was to inform interested parties of

the Application of Exergy and of the manner and time in which to file the appropriate pleadings for participation in the proceeding. Exergy complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. No Petitions to Intervene or Protests were filed.

A hearing was convened on August 7, 2003, at 10:30 a.m. in the Commission's Hearing Room, Columbia, South Carolina. The Honorable Mignon Clyburn, Chairman, presided. Exergy was represented by Scott Elliott, Esquire. Jocelyn Boyd, Staff Counsel, represented the Commission Staff.

Chady Abou, Manager of the Company, appeared and testified in support of the Application. The record reveals that Exergy is a Florida Limited Liability Corporation which is registered to transact business in South Carolina as a foreign corporation. According to Mr. Abou, Exergy proposes to offer intrastate interLATA and, to the extent authorized by the Commission, intraLATA direct-dialed services including (1+) service, flat rate service, 800 inbound service, and travel cards for communications originating and terminating within the State of South Carolina. Exergy does not intend to offer pre-paid calling cards in South Carolina. Exergy does not own any network switches or transmission facilities and will operate as a reseller of services. Mr. Abou explained the Company's request for authority, and the record reveals the Company's services, operations, and marketing procedures.

Mr. Abou also discussed Exergy's technical, financial, and managerial resources to provide the services for which it seeks authority to provide. Mr. Abou offered that Exergy possesses sufficient financial resources to support its operations in South

Carolina. A review of the financial documents submitted as an exhibit to the Application reveals a healthy current ratio. With regard to management and technical capabilities, Mr. Abou stated that the Chief Operating Officer, Mr. Walter Rusak, has over thirty-five years of experience in the telecommunications business and has worked as an executive officer for companies such as AT&T and MCI. Mr. Abou also testified that Exergy will operate in accordance with Commission rules, regulations, guidelines, and Commission Orders.

Mr. Abou also offered that Exergy intends to use Global Crossing, Qwest, MCI and/or Sprint as its underlying carriers. He further offered that the Commission's approval of Exergy's Application would serve the public interest by increasing the level of long distance competition in South Carolina, by providing a high-quality alternative of long distance service, and by increasing consumer awareness of options and services available, thus encouraging the growth and success of competitive services.

After full consideration of the applicable law, the Company's Application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

#### **FINDINGS OF FACT**

1. Exergy is organized as a corporation under the laws of the State of Florida and is authorized to do business as a foreign corporation in the State of South Carolina by the Secretary of State.
2. Exergy operates as a non-facilities based reseller of interexchange services and wishes to provide its services in South Carolina.

3. Exergy has the experience, capability, and financial resources to provide the services as described in its Application.

### **CONCLUSIONS OF LAW**

1. Based on the above findings of fact, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to Exergy to provide intrastate interLATA service and to originate and terminate toll traffic within the same LATA, as set forth herein, through the resale of intrastate Wide Area Telecommunications Services (WATS), Message Telecommunications Service (MTS), Foreign Exchange Service, Private Line Service, or any other services authorized for resale by tariffs of carriers approved by the Commission.

2. The Commission adopts a rate design for Exergy for its resale of residential services which includes only maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

3. Exergy shall not adjust its residential rates below the approved maximum level without notice to the Commission and to the public. Exergy shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances which do not affect the general body of subscribers or do not

constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level for residential services reflected in the tariff which would be applicable to the general body of the Company's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp. 2002).

4. With respect to Exergy's business services, consumer card, and operator service offerings, the Commission adopts a relaxed regulatory scheme identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. Under this relaxed regulatory scheme, tariff filings for business services shall be presumed valid upon filing. The Commission will have seven (7) days in which to institute an investigation of any tariff filing. If the Commission institutes an investigation of a particular tariff filing within the seven days, the tariff filing will then be suspended until further Order of the Commission. Any relaxation in the future reporting requirements that may be adopted for AT&T shall apply to Exergy also. These alternative regulation orders were modified by Order No. 2001-997 in Docket No. 2000-407-C which imposed a cap on operator-assisted calls where a consumer uses a local exchange carrier's calling card to complete calls from locations which have not selected the local exchange carrier as their toll provider. The provisions of this Order and this modification also apply to Exergy.

5. If it has not already done so by the date of issuance of this Order, Exergy shall file its revised tariff and an accompanying price list within thirty (30) days of

receipt of this Order. The revised tariff shall be consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations.

6. Exergy is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that for access purposes resellers and facilities-based interexchange carriers should be treated similarly.

7. With regard to the Company's resale of service, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

8. Exergy shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If Exergy changes underlying carriers, it shall notify the Commission in writing.

9. With regard to the origination and termination of toll calls within the same LATA, Exergy shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993), with the exception of the 10-XXX intraLATA dialing requirement, which has been rendered obsolete by the toll dialing parity rules established by the FCC pursuant to the Telecommunications Act of 1996 (See, 47 CFR 51.209). Specifically, Exergy shall comply with the imputation standard as adopted by Order No. 93-462 and more fully described in paragraph 4 of the Stipulation and Appendix B approved by Order No. 93-462.

10. Exergy shall file annual financial information in the form of annual reports and gross receipts reports as required by the Commission. Both the annual report and the

gross receipts report will necessitate the filing of intrastate information. Therefore, Exergy shall keep financial records on an intrastate basis for South Carolina in order to comply with the Commission's requirements of filing an annual report and a gross receipts report. The proper form for filing annual financial information may be found on the Commission's website at [www.psc.state.sc.us/forms](http://www.psc.state.sc.us/forms). The title of this form is "Annual Information on South Carolina Operations for Interexchange Companies and AOS", and the proper form may be found under one of the links entitled "Annual Reports." This annual report form shall be utilized by the Company to file annual financial information with the Commission and shall be filed by April 1<sup>st</sup> of each year. Commission gross receipts forms are due to be filed with the Commission no later than August 31st each year. The appropriate form for remitting information of gross receipts is entitled "Gross Receipts Form for Utility Companies" and may be found on the Commission's website at [www.psc.state.sc.us/forms](http://www.psc.state.sc.us/forms).

11. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, the Company shall provide to the Commission in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours. Exergy shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The "Authorized Utility Representative Information" form can be found at the Commission's website at

[www.psc.state.sc.us/forms](http://www.psc.state.sc.us/forms); this form shall be utilized for the provision of this information to the Commission. Further, the Company shall promptly notify the Commission in writing if the representatives are replaced.

12. The Company is directed to comply with all Rules and Regulations of the Commission, unless a regulation is specifically waived by the Commission.

13. At the hearing, Exergy requested a waiver of Reg. 103-610, which requires that records required by the Commission's Rules and Regulations be maintained in South Carolina. The record reveals that Exergy's principal headquarters is located in Hialeah, Florida, and Exergy requests permission to maintain its books and records at its headquarters in that city and state. The Commission finds Exergy's requested waiver reasonable and understands the difficulty presented to Exergy should the waiver not be granted. The Commission therefore grants the requested waiver that Exergy be allowed to maintain its books and records at its principal headquarters. However, Exergy shall make available its books and records at all reasonable times upon request by the Commission or the Commission Staff, and Exergy shall promptly notify the Commission if the location of its books and records changes.

14. Each telecommunications company certified in South Carolina is required to file annually the Intrastate Universal Service Fund (USF) worksheet. This worksheet provides the Commission Staff information required to determine each telecommunications company's liability to the State USF fund. The Intrastate USF worksheet is due to be filed annually no later than August 15<sup>th</sup>.



15. This Order shall remain in full force and effect until further Order of the Commission.

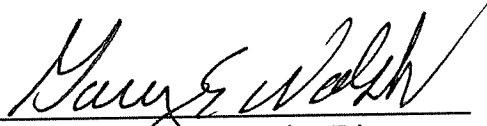
BY ORDER OF THE COMMISSION:



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Mignon L. Clyburn, Chairman

ATTEST:



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Gary E. Walsh, Executive Director

(SEAL)